



WISCONSIN SUPREME COURT

Friday, March 12, 2004

9:45 a.m.

02-1915

Tammy Kolupar v. Wilde Pontiac Cadillac, Inc., et al.

This is a review of a split decision of the Wisconsin Court of Appeals, District I (headquartered in Milwaukee), which affirmed a ruling of the Milwaukee County Circuit Court, Judge Thomas R. Cooper presiding.

This case started 10 years ago. It involves an 18-year-old woman who bought a used car that turned out to be a lemon, and a mountain of litigation that grew out of her purchase. The Supreme Court will decide whether the buyer should have been awarded more than \$15,000 to cover her costs and attorney fees.

Here is the background: In spring 1993, when Tammy Kolupar graduated from high school, she purchased a new Pontiac Sunbird from Wilde Pontiac Cadillac in Waukesha. Nine months later, Kolupar went back to the dealership and traded in her 1993 Sunbird, on which she still owed \$10,300, for a 1986 Mercedes Benz. Sales Manager Randall Thompson told her the Benz was part of a special “dealership sale” but, in fact, it was Thompson’s personal car. He had purchased it approximately six months earlier for \$5,700 and he sold it to Kolupar for \$8,600. This practice, according to the Wisconsin Department of Transportation, is called “curbing” cars.

According to Kolupar, she immediately began to have trouble with the Benz. The odometer was broken, the brakes needed repairs, the vehicle overheated and stalled in traffic, and, within a few months, she said, it stopped running altogether. She sold it for \$2,000.

Kolupar hired an attorney who sent Wilde a letter calling the transaction fraudulent and offering to settle the matter for \$13,000. The dealership’s lawyer did not agree that the dealership was responsible and therefore refused to negotiate. Kolupar sued Thompson and the dealership. The circuit court appointed a special referee to manage the parties’ many discovery requests. Wilde’s approach to the case, which included asking Kolupar’s friends about her alleged past work in a topless bar, was later described by Court of Appeals Judge Ralph Adam Fine as a “scorched-earth Rambo-litigation policy”, while Kolupar’s approach was described by the circuit court as alleging that Wilde did everything “short of conquering Europe during World War II.”

Kolupar eventually agreed to settle her claim against Wilde and Thompson for \$6,600 plus her costs, which, by that time, had ballooned to \$41,000 worth of attorney fees and \$10,600 in court fees. When asked by the judge for his opinion on the appropriate award for these fees, the referee said, “In 30 years in [the] practice of law, as well as 15 years as a circuit court judge myself, I have never seen a \$6,000 case grown barnacles the way this one has.” He went on to say, “I don’t think this case is worth much more than \$15,000 in fees. Although I know both sides spent a lot more time than that.” The judge agreed, and ordered this amount.

The Court of Appeals upheld this ruling, finding that the trial judge had the authority to order a payment that he considered to be reasonable.

Kolupar now has come to the Supreme Court, which will determine whether this award was fair, or whether, as Fine's dissent argued, it demonstrates that a "rich defendant can frustrate at every turn a poor plaintiff's quest for justice."